No. 14352

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

SAM BLASSINGAME,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

HONORABLE WILLIAM J. LINDBERG, *Judge*

BRIEF OF APPELLEE

CHARLES P. MORIARTY
United States Attorney

RICHARD D. HARRIS
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BRIEF OF APPELLEE

STATEMENT OF THE CASE

The appellant's statement of the case does not exactly comply with Rule 18(2)(c) of this Court which requires the same to succintly present the questions involved and the manner in which they are raised. Rather, it attempts to detail the case, from a viewpoint most favorable to the appellant, the evi-

dence admitted as to Count I of the Indictment under which the appellant Blassingame and his co-defendant, Patricia Lewis, whose true name was Mary Donna Songahid, were tried and convicted by a jury. The appellant Blassingame was sentenced to four years' imprisonment, and he, alone, appealed, while his co-defendant, Lewis, was placed on probation for three years and did not appeal.

Count I of the Indictment charged the defendants with conspiring to violate the White Slave Traffic Act.

The statute under which Count I of the Indictment was drawn reads as follows: (Title 18, U.S.C.A., Section 371)

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.
> * * * *"

The Indictment returned in this case is set forth in Appellant's Brief, p. 4 and 5, and it is conceded that the correct date as contained therein is January 5, 1953.

The appellant, Blassingame, elected not to take the witness stand at the conclusion of the Government's case. The only defense offered by the appellant was that portion of his co-defendant's testimony which might have established a defense for the appellant.

Along about the last of the year of 1952 (R. 22) Sam Blassingame, a colored man, and Pat Lewis, a white woman, who had known one another since 1949 (R. 108) discussed at the home of Mrs. Beulah Smith at 112 7th Avenue, Seattle, Washington, (R. 24) a trip to Portland, Oregon, (R. 25). Pat Lewis told Mrs. Smith she was going to Portland to make some money (R. 26). Mrs. Smith asked to go along with them, but was advised by Sam Blassingame that there would be no colored people where they were going (R. 25). Prior to this time Mrs. Smith had met Pat Lewis and Sam Blassingame at her home, and she knew Pat Lewis to be a prostitute (R. 24). In fact Pat Lewis admitted practicing prostitution during the past five or six years (R. 108).

Pat Lewis admitted going to Portland, Oregon on December 31, 1952, by airplane, and checking in at the Chamberlain Hotel where she kept a room there till she left Portland on January 5, 1953 (R. 108, 109) although only actually staying there one or two

days (R. 141). After arriving at Portland and after some search, Pat Lewis finally located Madison Wilson and Alvina Newman and went to their house to stay (R. 141). Pat Lewis said she never saw Sam Blassingame while she was in Portland (R. 142) until she met him at the airport on January 5, 1953 (R. 109), although she said she heard he had been to the Wilson-Newman home while she was there (R. 142).

At the airport in Portland, Oregon, on January 5, 1953, Pat Lewis and Sam Blassingame met by chance, supposedly. However, flight No. 675 (R. 57) on United Airlines, a common carrier (R. 55) between Portland and Seattle, on January 5, 1953, did not leave Portland for Seattle until 3:45 p. m. (R. 57) and they both, by chance, arrived at the airport at 1:30 or 2:00 p. m. to buy their tickets (R. 58).

Pat Lewis admits she used her own money to buy her own ticket (R. 110). She in fact bought both her ticket and Sam Blassingame's from R. A. Caughey, United Airlines ticket agent, in Portland (R. 56).

Pat Lewis and Sam Blassingame left Portland at 3:45 p. m. on January 5, 1953 on United Airlines flight No. 675 and arrived at the airport in King

County one hour later (R. 57, 58). They both took the same cab from the airport to an address near Jackson Street in the City of Seattle, where Blassingame got his own personal car and drove Pat Lewis to her apartment at 3009½ E. Spruce Street, Seattle (R. 100). By 1:00 a.m. January 6, 1953, Pat Lewis had by her own admission performed three acts of prostitution (R. 150, 151) even though she stated that her purpose for returning to Seattle was *not* to work as a prostitute. She was then arrested by Seattle Police officers for prostitution, and while being booked at the City Jail attempted to destroy the United Airlines flight No. 675 ticket stubs for "Mr. and Mrs. Blassingame" which she had previously purchased in Portland, Oregon for the reason as she said that they might incriminate Sam Blassingame (R. 101). She was subsequently released from jail on January 9, 1953 (R. 112).

On January 21, 1953, Sam Blassingame rented under the name of Robert Morris a house at 724 22nd Avenue South, Seattle, Washington. (This was established by Chas. H. Winston's testimony which apparently was inadvertently omitted from the printed record.) Approximately three or four days prior to this, Sam Blassingame persuaded Patsy Ruth McCandless, a colored girl, to engage in prostitution and took her to 724 22nd Avenue South, where she met Pat

Lewis, and it was explained to Mrs. McCandless by Blassingame what she was to do as a prostitute (R. 71-77). Pat Lewis acted in charge of the house admitting the men into the house and doing various other things as well as practicing prostitution there herself, turning some money that she, Pat Lewis, earned while she was working there, over to Blassingame, and Patsy McCandless turned all of her money over to Blassingame on the average of $60.00 to $70.00 per night.

I

ARGUMENT ON SPECIFICATION OF ERROR No. 1

The argument of appellant on Specification of Error No. 1 relates to the charge in the Indictment that one cannot conspire to persuade oneself, and therefore, it does not charge a crime.

The offense charged in the Indictment is one of conspiracy to commit an offense against the United States, and the language of Count I is sufficient to charge a crime under Title 18, U.S.C., Section 371.

The language in *U. S. v. Holte*, 236 U.S. 140, wherein Mr. Justice Holmes delivers the opinion of the Court, commences with the following statement:

> "This is an indictment for a conspiracy between the present defendant and one Laudenschleger that Laudenschleger should cause the defendant to be transported from Illinois to Wisconsin for the purpose of prostitution, * * *."

Certainly the Indictment in its entirety in the instant case covers all the requirements suggested by the Supreme Court in the *Holte* case.

This Court has stated in *Miller v. U. S.*, 95 F. 492, that it is possible for a female victim to be guilty of conspiring to violate the White Slave Traffic Act.

Appellant contends strongly that the indictment, in charging that the appellant and Patricia Lewis, the codefendant, "did conspire and agree together, and with each other, to commit an offense against the United States, that is to knowingly and unlawfully, and in violation of Title 18, U.S.C., Section 2422, cause the said Patricia Lewis, alias Pat Lewis, to go in interstate commerce . . ." is insufficient in that it charges instead a conspiracy to commit an offense under Title 18, U.S.C., Section 2421. The appellant urges that the two offenses under the statute are "distinct and separate, and an indictment under one section will not support a conviction under the other." (Appellant's Brief, p. 12).

However, it is urged by the government that admitting for the purpose of this argument that the citation in the Indictment should have referred to a conspiracy to commit the related offense under Title 18, U.S.C., Section 2421, the Indictment is not insufficient since it informs both defendants of the charge and does not tend to mislead them. Error in the citation or its omission shall not be grounds for dismissal of the Indictment or Information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice. *Federal Rules of Criminal Procedure*, Section 7(c).[1]

The cases relied on in support of Rule 7(c) above unquestionably show the rule followed in the United State Supreme Court. In *Williams v. United States*, 168 U.S. 382, 18 S. Ct. 92, 42 L.Ed. 509, where a port inspector was convicted of extortion and appealed on

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[1]The revisers of the Federal Rules state that "the law at present regards citations to statutes or regulations as not a part of the indictment. A conviction may be sustained on the basis of a statute or regulation other than that cited . . . The provision of the rule, in view of the many statutes and regulations, is for the benefit of the defendant and is not intended to cause a dismissal of the indictment, but simply to provide a means by which he can be properly informed without danger to the prosecution." Citing *Williams v. United States*, 168 U.S. 382, 389, 18 S. Ct. 92, 42 L.Ed. 509; *United States v. Hutcheson*, 312 U.S. 219, 229, 61 S. Ct. 463, 85 L.Ed. 788.

the grounds, *inter alia*, that the Indictment did not correctly cite the statute under which he was convicted, the court held that the indorsement on an Indictment of the statute under which it is drawn is no part of the Indictment, which is sufficient if it charges an offense under *any statute*. The court states (at p. 94) that:

> "It is wholly immaterial what statute was in the mind of the district attorney when he drew the indictment, if the charges made are embraced by some statute in force. The indorsement on the margin of the indictment constitutes no part of the indictment, and does not add to or weaken the legal force of its averments. We must *look to the indictment itself*, and *if it properly charges an offense under the laws of the United States, that is sufficient to sustain it*, although the representative of the United States may have supposed that the offense charged was covered by a different statute." (Emphasis supplied)

In the later case of *U. S. v. Hutcheson*, 61 S. Ct. 463, 312 U.S. 219, 85 L.Ed. 788, the court, citing *Williams v. U. S. supra*, said that in determining whether an Indictment charges an offense, the pleader's designation of a statute purporting to support the charge is immaterial, since *the charge, though not sustained by that statute, may come within the terms of another*. The court stated (at p. 229):

> "In order to determine whether an indictment charges an offense against the United States, *designation by the pleader of the statute under*

> *which he purported to lay the charge is immmaterial.* He may have conceived the charge under one statute which would not sustain the indictment but it may nevertheless come within the terms of another statute." (Emphasis supplied).

This court has followed the rule, relying upon *Williams v. U. S., supra,* and held that the Indictment need not state the particular section of the law violated by the accused. *Smith v. Johnston,* 83 F. 2d 331 (C.C.A. 9th 1936). In that case where the accused was indicted for receiving stolen cigarettes from an interstate carrier and contended that the Indictment was insufficient because the correct section of the statute was not cited, this court said (at p. 321):

> "Appellant claims that the indictment was insufficient because it did not state the particular section of the law which he had violated. *This was unnecessary. Williams v. United States,* 168 U.S. 382, 389, 18 S.Ct. 92, 42 L.Ed. 509; *Taylor v. United States* (C.C.A.) 2 F. 2d 444, 446." (Emphasis supplied).

This court earlier had held that the *statute* on which an indictment is found is *determinable as a matter of law from the facts charged,* although the statute is not mentioned, and *Indictment is brought under another statute. Vedin v. U.S.,* 257 Fed. 550 (C.C.A. 9th 1919). Similarly, the District Court for the Western District of Washington has held in *United States v. Lucas,* 6 F. 2d 327, that an Indictment

based on the wrong statute is immaterial if it constitutes an offense.

Under the authorities cited above, the recitation of Title 18, U.S.C., Section 2422 in the Indictment is not fatal where the Indictment sufficiently charges a conspiracy under Title 18, U.S.C., Section 371 to violate Title 18, U.S.C., Section 2421 or 2422. The evidence produced at the trial and the instructions of the court to the jury were sufficient to sustain the finding of guilty under the Indictment.

It is the contention of the appellant that the Indictment is insufficient in another particular, *viz.*, that the appellant is not charged with conspiring with the co-defendant or "anyone else to persuade or entice or induce her to go" in interstate commerce; "and that is the offense which is punishable by the statute under which he is charged." (Appellant's Brief, p. 14). This contention is unsound. The Indictment charges that the appellant and the co-defendant "did conspire and agree together, and with each other, to commit an offense against the United States, that is, to knowingly and unlawfully * * * cause the said Patricia Lewis . . . *to go in interstate commerce* from Portland, Oregon to Seattle, Washington, *with the intent and purpose* on the part of said Sam Blassingame and Patricia Lewis *that the said Patricia Lewis should engage in the practice of prostitution* and that

said defendants did *knowingly cause said Patricia Lewis to go and be carried as a passenger upon the line of a common carrier*, to-wit, United Airlines, in the said interstate commerce." (R. 3). (Emphasis supplied). The gist of the crime here charged is the *conspiracy*—the conspiracy to violate a law of the United States, *viz.*, the White Slave Traffic Act which makes it an offense for any person to *knowingly transport in interstate* or *foreign commerce* "any *woman* or *girl for the purpose of prostitution* or debauchery, or for any other immoral purpose, *or* with the intent and purpose to induce, entice, or compel such woman or girl to give herself up to debauchery, *or* to engage in any other immoral practice; *or*

"Whoever knowingly procures or obtains any ticket . . . or any form of transportation . . . to be used by any woman or girl in interstate or foreign commerce . . . *in going to any place* for the purpose of prostitution, or for any other immoral purpose, *or* with the intent or purpose on the part of such person to induce, entice or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, *whereby any such woman or girl shall be transported in interstate or foreign commerce . . .*" Title 18, U.S.C., Section 2421. (Emphasis supplied).

This court sustained a conviction on substantially the same facts where it was urged by appellant that the conspiracy indictment failed to state an offense because there was no allegation of joint intent. In *Corbett v. U. S.*, 299 Fed. 27 (C.C.A. 9th 1924), the court said (at p. 30):

> "It is argued that the conspiracy indictment fails to state an offense because there is no joint intent alleged. The point is not well founded as the indictment distinctly alleges that the defendants Corbett and Nora E. Bishop, alias Ellen Stone, wilfully, knowingly, unlawfully and feloniously conspired and agreed together to commit an offense against the United States, to-wit, to violate the act of Congress known as the White Slave Traffic Act (Act June 25, 1910, 36 Stat. 825) in the 'following manner and particulars.' *Pierce et al v. United States*, 252 U.S. 239, 244, 40 Sup. Ct. 205, 64 L.Ed. 542. With considerable detail the indictment then alleges an agreement that Nora E. Bishop should be transported from Spokane, Wash., to Boise, Idaho, and that Corbett should knowingly transport and aid in transporting her from Spokane to Boise as a passenger upon a line of a common carrier, the name of which is given, with intent and purpose on the part of Corbett to induce, entice, and procure Nora E. Bishop to give herself up to debauchery and other immoral practices. Several overt acts are alleged. *United States v. Holte*, 236 U.S. 140, 35 Sup. Ct. 471, 59 L.Ed. 504, L.R.A. 1915D, 281."

Similarly, this court in *Hoffman v. U. S.*, 87 Fed. 2d 410 (C.C.A. 9th 1937) sustained a conviction for the substantive offense the appellant and co-defendant

are here charged with conspiring to commit where it was charged that the defendant "caused and aided a woman * * * to be carried in interstate commerce * * * for the purpose of debauchery and for the immoral purpose of sexual intercourse * * * over the lines and routes of named Greyhound Lines."

The essential elements of an offense under the Mann Act are knowingly transporting in interstate commerce a woman for the purpose of prostitution or debauchery or any other immoral purpose. This court has so held where the defendant was convicted for knowingly causing a woman to be transported from Seattle, Washington, to Portland, Oregon. *Tedesco v. U. S.* 118 F. 2d 737 (C. C. A. 9th 1941). *Accord*: *Ellis v. U. S.*, 138 F. 2d 612 (C.C.A. 8th 1943); *Masse v. U. S.*, 210 F. 2d 418 (C.C.A. 5th 1954).

Appellant relied strongly on *Gebardi v. U. S.*, 287 U.S. 112, 53 S.Ct. 35. 77 L.Ed. 206, 84 A.L.R. 370, to support his contention that "the woman who aids or assists in her own transportation is not guilty of a violation of the Mann Act" and "it follows that she cannot be guilty of conspiriing to do so." (Appellant's Brief, p. 14). This contention is unsound. A close reading of the opinion in the *Gebardi* case will reveal that the decision is restricted to its facts. The court held that *mere agreement* on the part of the of the

woman to her transportation in interstate commerce and its immoral purpose does not render her punishable as a coconspirator to violate the act. Incapacity of one to commit a substantive offense does not necessarily imply that he may with impunity conspire with others who are able to commit it. *Gebardi v. U. S. supra.*

In a case where a woman was cited for contempt for refusing to answer questions to the grand jury concerning her relations and travel with a man, the subject of an investigation for violation of the Mann Act, on the ground of self-incrimination, this court held that there was no evidence that this particular woman would subject herself to criminal liability under the Mann Act. *Miller v. U. S., supra.* The court said (at p. 494) that:

> "*A woman transported in violation of the* (Mann) *act* may, conceivably, *be guilty of conspiring* with the person transporting her to violate the act * * * Whether there was or was not a reasonable probability that appellant's answers would have shown or tended to show her participancy in such a conspiracy was a question of fact to be determined upon the evidence received at the trial." (Emphasis supplied).

In *Corbett v. U. S., supra,* where the defendant was indicted in one count for transportation of his codefendant in interstate commerce from Spokane, Washington, to Boise, Idaho, with the intent and pur-

pose to induce, entice and compel her to engage in illicit relations, *both the defendant and his codefendant were convicted of conspiracy to effect the transportation charged in the first count. Corbett v. U. S., supra.*

An indictment for conspiracy to commit an offense need only identify such offense. *Wong Tai v. U. S.*, 47 S. Ct., 300 273 U.S. 77, 71, L.Ed. 35 (1927). While the essential elements of a substantive offense must be charged with particularity, this is not necessary when conspiracy is charged. *U. S. v. Walburg*, 47 F. Supp. 352 (S.D. Cal. 1942).

Every intendment must be indulged in support of an indictment after verdict. *Coates v. U. S.*, 59 F. 2d 173 (C.C.A. 9th 1932). This court stated (at p. 174) that:

> "Every ingredient and element of the conspiracy is clearly set out and 'sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.' *Cochran and Sayre v. United States, supra,* 157 U.S. 286, 290, 15 S. Ct. 628, 630, 39 L.Ed. 704 * * * The conspiracy need not be charged with the same particularly as substantive offenses."

True, the plan of the conspiracy must be found in the clause in the Indictment which sets it forth,

however, the overt acts may be looked at to ascertain the sense in which terms are used and for the purpose of interpreting doubtful terminology in the charging clause. *Stearns v. U. S.*, 152 Fed. 900; *U. S. ex rel Semel v. Fitch*, 66 F. Supp. 206. When the Indictment in this case is read in its entirety, there is no uncertainty; nothing is left to conjecture and the appellant was completely apprised of the charge upon which he was tried and convicted.

Appellant has failed to bear in mind that the crime of which he was found guilty was one of conspiracy, which provides for its own penalties, its own essential elements of proof, and its own rules of evidence and procedure.

The charge here is one of conspiracy. The crime under the statute is for "two or more persons" to "*conspire to commit any offense against the United States*, and for *one or more* of such persons *to do any act* to *effectuate the object of the conspiracy.*" Title 18, U.S.C., Sec. 371.

Appellant apparently attacks the sufficiency of the Indictment. The Rules of Criminal Procedure provide that "The Indictment or the Information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged," Rule 7(c). Under Rule 58 of The Rules

of Criminal Procedure, illustrative forms of Indictments are appended. The forms reveal a simplicity of statement which indicates to the defendant (or defendants) the nature of the act or offense and the time and place where the act occurred.

Here the Indictment meets the requisites of certainty as demanded by this Court, the Supreme Court of the United States, and the Circuit Courts.

The gist of the crime here charged is one of *conspiracy*—the conspiracy to commit an offense against the United States, viz., to violate the White Slave Traffic Act. An Indictment for conspiracy to commit an offense need only identify such offense. *Wong Tai v. United States*, 47 S.Ct. 300, 273, U.S. 45, 71 L.Ed. 545 (1927). While the essential elements of a substantive offense must be charged with particularity, this is not necessary when conspiracy is charged, *United States v. Walburg*, 47 F. Supp. 352 (S.D. Cal. 1942). The act of conspiracy is the gist of the crime and only certainty as to a common intent is necessary. *Williams v. United States*, 18 S.Ct. 92, 168 U.S. 382, 42 L.Ed. 509. Every intendment must be indulged in support of Indictment after verdict. *Coates v. United States*, 59 F. 2d 173 (C.C.A. 9th 1932).

In the case of *Corbett v. U. S.*, 299 Fed. 27, 29 (C.A. 9) this court held sufficient an indictment in which the defendants "willfully, unlawfully and feloniously to commit an offense against the United States, to-wit, to violate the act of Congress known as the White Slave Traffic Act in the following manner and particulars * * *."

The sufficiency of criminal proceedings in the Federal Courts is determined by practical rather than technical considerations. This Court expressed that view in *Hopper v. U. S.*, 142 F. 2d 181 (C.A. 9) where the defendant was indicted for failure to perform duty required under the Selective Service Act in failing to report as a conscientious objector. The Court said (at p. 184):

> " * * * The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, 'and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction' * * *."

This Court reaffirmed this view in the later case of *Rose v. United States*, 149 F. 2d 755 (C.C.A. 9th 1945) where the defendants were convicted of conspiracy to commit offenses against the United States

in selling and transferring new rubber tires in violation of Statute, Executive Orders, Regulations and Directives. In overruling the contention of the appellants that the Indictment was insufficient, the Court said (at p. 758):

> "The sufficiency of an indictment must be determined on the basis of practical rather than technical considerations. *Hopper v. United States*, 9 Cir., 1944, 142 F. 2d 181, 184; *Marin v. United States*, 4 Cir., 1924, 299 Fed. 287, 288. It is not the law that to charge conspiracy to commit an offense, all the elements need be precisely alleged. *Wong Tai v. United States*, 1927, 273 U.S. 77, 81, 47 S. Ct. 300, 71 L.Ed. 545; *Williamson v. United States*, 1908, 207 U.S. 425, 447, 28 S.Ct. 163, 52 L.Ed. 278. This court has held that: 'The essence of the crime of conspiracy is the unlawful combination, and if the object of the conspiracy is the accomplishment of some unlawful act, the means by which the unlawful act is to be accomplished need not be set forth in the indictment.' *Proffitt v. United States*, 9 Cir., 1920, 264 Fed. 299, 302. In the instant case a fraudulent conspiracy to transfer rubber tires and tubes in violation of rationing regulations is charged, the terms of the applicable regulations are mentioned in the indictment, and overt acts in furtherance of the object of the conspiracy are therein set forth. These allegations are sufficient."

So long as the Indictment for conspiracy is sufficient to inform the defendants of the charge against them, it is sufficient where the Indictment alleges an agrement to do an unlawful act and the means by

which that agreement was achieved. *Schino v. United States*, 209 F. 2d 67, 69, (C.C.A. 9th, 1953). *United States v. Falcone*, 311 U.S. 205, 210, 61 S.Ct. 204, 85 L.Ed. 128. The test of the sufficiency of an Indictment is "whether it contains such a plain, definite and certain statement of essential facts to enable him to fully prepare his defense and plead jeopardy." *United States v. Pruitt*, 121 F. Supp. 15, 20 (S.D. Tex. 1954). We must look to the Indictment itself, and if it properly charges an offense under the laws of the United States, that is sufficient to sustain it. *Williams v. United States*, *supra*.

II
ARGUMENT ON SPECIFICATION OF ERROR No. 2

The argument of appellant on Specification of Error No. 2 seems to contend that there was no proof of any conspiracy in the case.

Reference is made to portions of the material advanced in the foregoing argument where pertinent, and to the following:

There are two leading cases on the question of whether a woman can be convicted in a conspiracy with another to violate the White Slave Traffic Act. These cases are *U. S. v. Holte*, *supra*, and *Gebardi v.*

U. S., supra. Both these cases answer the question in the affirmative. Neither has been overruled, both are presently being cited as current authority.

The *Holte* case positively answered the question, while the *Gebardi* case in answering the question affirmatively made certain qualifications and placed certain restrictions on its answer, but bear in mind the question is still answered "yes".

The appellant has referred to the *Corbett v. U. S.* case, supra, decided after the *Holte* case but prior to the Gebardi case, by the Ninth Circuit and which the Government feels is controlling as to the instant case, although the *Corbett* case is not nearly as strong on its facts as the instant case.

Counsel for the appellant has referred to the case of *U. S. v. Holtz*, 103 F. Supp. 191, which was appealed only as to the defendant Martin and is reported as *U. S. v. Martin*, 191 F. 2d 569, (C.C.A. 7) but likewise that case is distinguishable from the instant case on the facts and by the further reason that in the instant case the jury has considered all the facts, whereas in *U. S. v. Martin*, supra, the Court heard the facts and decided on the issues.

A conspiracy may be sustained by evidence showing concert of action in the commission of the unlawful act or by proof of other facts from which natural

inference arises that the unlawful acts were in furtherance of a common design. *U. S. v. Holt*, 108 F. 2d 365; *U. S. v. Glasser*, 116 F. 2d 690; *Reavis v. U. S.*, 106 F. 2d 982.

The proposition that one co-defendant being immune from prosecution alone as to a certain crime and therefore could not be convicted of a conspiracy to violate that crime has been rejected. *U. S. v. Robinowich*, 238 U.S. 78; *Farnsworth v. Zerbst*, 98 F. 2d 541; *Hemans v. U. S.*, 168 F. 2d 228; *May v. U. S.*, 175 F. 2d 994.

A woman who is the subject of transportation in interstate commerce for purposes of prostitution may be guilty of a conspiracy to violate the provisions of the White Slave Traffic Act. *U. S. v. Holte*, *supra; Gebardi v. U. S.*, *supra.*

This proposition came into effect prior to 1915, and the decision in the *Holte* case, but with that decision it was made a part of our law and is still in existence and followed; the *Holte* case, being cited as authority as recently as *Brown v. U. S.* (1953) 204 F. 2d 247, wherein it was stated at page 250:

> "The evidence established and the jury found that appellant was the prime mover in this system of extortion. It was carried on at his direction, for his benefit and for a considerable period of time. The fact that the appellant was a private citizen and legally incapable of violating Sec. 242

> does not render him immune from the charge of violating 18 U.S.C. 371 by engaging in an agreement with a law enforcement officer acting under color of the State law to violate 18 U.S.C. 242. *U. S. v. Holte*, 236 U.S. 140 * * *."

The *Holte* case is still authority in the Ninth Circuit. It was cited as authority in *Corbett v. U. S.*, supra, decided in 1925. It was further cited as authority in the case of *Miller v. U. S.*, supra, wherein it is stated at page 494:

> "It must be and is conceded by appellant that, whatever her answers might have been, they could not have tended to show a violation by her of the White Slave Traffic Act, 18 U.S.C.A., Sec. 397, et seq. That act does not punish a woman for transporting herself. Though she may be the willing object of such transportation, still, if she does not aid or assist otherwise than by her consent, she does not violate the act. *Gebardi v. U. S.*, 287 U.S. 112 * * *.
>
> "The only federal offense of which it is claimed appellant's answers might have contended to prove her guilty is that of conspiring to violate the White Slave Traffic Act. A woman transported in violation of the act may, conceivably, be guilty of conspiring with the person transporting her to violate the act. *U. S. v. Holte*, 236 U.S. 140 * * *.
>
> "It cannot, however, be said that appellant's answers, if she had answered, must necessarily have tended to show her participancy in such a conspiracy. Assuming the questions to have been answered in a manner most damaging to Jackson, the person under investigation, it still does not follow that such answers would have shown a conspiracy by appellant with Jackson to violate

the act. Such answers might well have shown mere acquiescence on her part, which alone, would not suffice to prove either a violation by her or a conspiracy by her to violate the act. *Gebardi v. U. S.*, supra.

"Whether there was or not a reasonable probability that appellant's answers would have shown or tended to show her participancy in such a conspiracy was a question of fact to be determined upon the evidence received at the trial. Not having the evidence before us, we could not say that it showed any such reasonable probability. It may, for all we know, have shown affirmatively and conclusively that there was neither probability nor possibility that appellant's answers would or could have any such effect. It may, as already suggested, have shown that appellant merely consented to or acquiesced in the illegal transportation of herself, or it may have shown that she did not consent or acquiesce, but was forcibly and violently abducted and transported from California to Oregon."

It is apparent from the *Miller* case, supra, just referred to, that this Circuit recognizes the proposition that a woman, also the subject, may be guilty of a conspiracy to violate the White Slave Traffic Act, and that it is still the controlling law in this district.

In the *Holte* case, supra, the Court, in passing upon the proposition under discussion stated:

"We do not have to consider what would be necessary to constitute the substantive crime under the act of 1910, or what evidence would be required to convict a woman under an indictment like this; but only to decide whether it is im-

possible for the transported woman to be guilty of a crime in conspiring as alleged."

The Court, after considering the words of the statute and the analagous cases, finally stated:

> "So we think that it would be going too far to say that the defendant could not be guilty in this case. *Suppose, for instance, that a professional prostitute, as well able to look out for herself as was the man, should suggest and carry out a journey within the act of 1910 in the hope of blackmailing the man, and should buy the railroad tickets, or should pay the fare from Jersey City to New York, — she would be within the letter of the act of 1910, and see no reason why the act should not be allowed to apply. We see equally little reason for not treating the preliminary agreement as a conspiracy that the law can reach,* if we abandon the illusion that the woman always is the victim. The words of the statute punish the transportation of a woman for the purpose of prostitution even if she were the first to suggest the crime. The substantive offense might be committed without the woman's consent, for instance, if she were drugged or taken by force. Therefore, the decisions that it is impossible to turn the concurrence necessary to effect certain crimes such as bigamy or duelling into a conspiracy to commit them, do not apply." (Italics ours)

The appellant has relied on the case of *Gebardi v. U. S.*, supra, but has misconstrued the holding therein. This case does not definitely decide that if the woman merely consents to the transportation or to go in interstate commerce for immoral purposes she cannot

be guilty of conspiracy to violate the act and certainly the case does not hold that if the woman does more than merely consent or acquiesce in the transportation for immoral purposes she cannot be guilty of the conspiracy to violate the act. In the *Gebardi* case, supra, at the bottom of page 117, the Court said:

> *"There is no evidence that she purchased the railroad tickets or that hers was the active or moving spirit in conceiving or carrying out the transportation. The proof shows no more than she went willingly upon the journeys for the purposes alleged."* (Italics ours)

Again, on page 123:

> "We place it rather upon the ground that we perceive in the failure of the Mann Act to condemn the woman's participation in those transportations which are effected with her *mere consent*, evidence of an affirmative legislative policy to leave *her acquiescence* unpunished."
> (Italics ours)

In both the *Holte* and *Gebardi* cases, supra, it can wisely be cautioned that whether or not the proposition is applicable to any particular case, seems to depend entirely upon the exact facts of the case in question.

In the instant case Pat Lewis was the active and moving spirit in conceiving the transportation. Here, in the instant case, the evidence indicates that the co-defendant, Pat Lewis, deliberately planned to go

to Portland, went to Portland, met the appellant, Sam Blassingame, that she used her money to buy her ticket; that she bought tickets from the ticket agent; that she purchased the tickets in the name of "Mr. and Mrs. Blassingame"; that she rode in appellant Sam Blassingame's personal automobile from Jackson Street to 3009½ E. Spruce Street; that she went to her apartment at 3009½ E. Spruce Street; that she during all this time wanted to practice prostitution; that she in fact did practice prostitution within six hours after her arrival at 3009½ E. Spruce Street; and that she "knew what she was doing."

Further, the evidence shows that she intended to destroy the names of "Mr. and Mrs. Blassingame" on the ticket receipts; that she stated her reason for her actions to be: "She didn't want to incriminate Sam Blassingame"; that she acted as a "madam" at the house at 724 22nd Avenue South, which Blassingame rented under an assumed name, and where Patsy McCandless practiced prostitution.

In 42 Am. Jur., Prostitution, Section 18, page 273, the principle is presented as follows:

> "The rule that an agreement to commit an offense which can be committed only by the concerted action of the persons to the agreement, does not amount to a conspiracy, does not in all strictness apply where the woman is charged as coconspirator with the man for violation of the

White Slave Traffic Act. The circumstances may be such that she may be guilty of a conspiracy to violate the provisions of the penal code relating to conspiracy to commit offenses against the United States apply to the offense created by the White Slave Traffic Act. and that consequently the woman subjected to unlawful interstate transportation may, if a guilty participant, be indicted as a co-conspirator with the person causing her to be transported."

III

ARGUMENT ON SPECIFICATIONS OF ERROR Nos. 3, 4, 5, 6 AND 7

The argument of appellant on Specifications of Error Nos. 3, 4, 5, 6 and 7 claims the trial court erred in admitting certain evidence, to-wit: Exhibits 1 and 2, the United Airline ticket stubs of "Mr." and "Mrs." Blassingame; the declarations of a co-conspirator made in the absence of the appellant; the declarations which imputed to the appellant the commission of other crimes; testimony admitted for the purpose of establishing intent; and improper impeachment of the co-defendant.

Concerning the admission into evidence of the two ticket stubs, Exhibits 1 and 2, the appellant's argument, if it can be called that for the purpose of this statement, recites no reason why they should have been excluded from the evidence, unless he hasn't read the record in the case, because without a doubt they

are connected with the appellant from the first moment they were sold by the witness Caughey to the co-defendant, Lewis, and to the appellant who was with her on January 5, 1953 at Portland, Oregon (R. 55, 56), these were the same ticket stubs recovered from the co-defendant, Lewis, on January 6, 1953 (R. 37, 38).

Appellant argues that statements of a co-conspirator made in the absence of the other co-conspirator are not admissible. Clearly that is not the law.

In the instant case the trial court was careful to instruct the jury with respect to these declarations (R. 21, 22, 33, 36, 37, 47, 65, 72, 77, 78, 79, 98, 183, 184, 185, 186), and a review of these instructions throughout the Government's case, and at the conclusion of the case in the Court's general charge to the jury, the rule of law on this question was constantly and properly before the jury.

Declarations of confederates are not confined to prosecutions of conspiracy. *U. S. v. Olweiss*, 138 F. 2d 798 (C.A. 2).

Appellant is confused by the rule that proof of an accused's *connection with a conspiracy* cannot be established by the acts and declarations made by co-conspirators in his absence; and that before he can be bound by the acts and declarations of his co-con-

spirators, both the conspiracy and the accused's participation therein must be established. *Glasser v. U. S.*, 315 U.S. 60; *Wiborg v. U. S.*, 163 U.S. 632. This was the Court's constant reminder and instruction to the jury.

The appellant and his co-defendant, Lewis, were not arrested for this crime, as he would lead you to believe, on January 6, 1953. The complaint in this case was not filed until December 3, 1953 (R. 101), and their arrest made subsequent to that date, even though constant reference to the arrest date of the co-defendant, Lewis, by the Seattle Police Department on a local community offense on January 6, 1953, is urged by the appellant in his brief as the arrest date in the instant case.

Appellant urges as error, the admission of the witness McCandless' testimony. It clearly was admissible on the question of intent as applying not only to the appellant but as to his co-defendant, Lewis, as well. Intent is a necessary ingredient of the crime of conspiracy and it was vital for the Government to prove the same as to both defendants. Intent may rest on inference, but facts must be proved that give rise to the inference. *U. S. v. Reginelli*, 133 F. 2d 595; *Langford v. U. S.*, 178 F. 2d 48 (C.A. 9). Acts and declarations, both before and after the crime charged

are admissible for the purpose of proving intent. *Hall v. U. S.*, 235 F. 869 (C.A. 9); *Lawrence v. U. S.*, 162 F. 2d 156 (C.A. 9); *Aplin v. U. S.*, 41 F. 2d 495 (C.A. 9).

The appellant further complains that his co-defendant was improperly impeached by the cross-examination of government counsel, and therefore that is reversible error as far as he is concerned. This is a novel proposition of law and counsel cites no authority for it at all. The cases cited by the appellant make for additional reading but lend no aid to the reasoning for advancing this claimed error.

Originally, the matter was opened by counsel for the co-defendant, Lewis, who in no way represented the appellant in any of the proceedings connected with the instant case.

(Witness: Mary Donna Songahid, also known as Patricia Lewis) (R. 108).

Direct examination.

By Mr. Prim:

Q. Now, you have had brushes with the law in prostitution and dope, isn't that correct?

A. Yes.

Q. And when? [146]

A. Here in the last five or six years.

Q. In Seattle?

A. Yes.

Q. And you have been convicted of prostitution and dope, isn't that right?

A. Yes.

The questions propounded above were leading in form, so that it could not be argued that the witness didn't understand the question and volunteered something that would tend to open the door to a line of inquiry not desired by the defense, but obviously counsel for the co-defendant wanted both matters before the jury, that is "brushes with the law" as well as "convictions."

Counsel for the Government on cross-examination then inquired into both of these matters, and counsel for the co-defendant did not see fit to object until the matters had been fairly well covered. The first time that he did object (R. 132) the Court sustained the objection and counsel for the Government went on to another subject (R. 133).

Appellant argues to this Court now, that the foregoing constituted error as to him. It may very well have been that the attorney for the co-defendant, Lewis, had some object in mind for allowing the cross-examination into these matters to continue until he saw fit to enter an objection, which he did at a point in the cross-examination when he, as an experienced trial lawyer, thought it would be in the best interests of his client to do so.

IV

ARGUMENT ON SPECIFICATIONS OF ERROR No. 8(a)(b)

The argument of appellant on Specifications of Error 8(a) and 8(b) now urges error in the Court's instructions regarding the definition of the crime for which the appellant and his co-defendant were being tried, and the proper kind of verdict to be returned.

No requested instructions were submitted by the appellant or his co-defendant. No exceptions to the Court's instructions were noted by the appellant or his co-defendant. The trial court gave additional safeguarding instructions to the jury other than those requested by the appellant or his co-defendant. All counsel agreed that the verdict should be "guilty" or "not guilty" as to both the appellant and his co-defendant.

The Indictment in this case charged a crime of conspiracy against two persons only, the appellant and his co-defendant, thus if one were found guilty and the other acquitted, no conspiracy would exist, because one cannot conspire with oneself to commit the crime of conspiracy. 11 Am. Jur., p. 560, Sec. 26.

V

ARGUMENT ON SPECIFICATIONS OF ERROR NOS. 9 AND 10

Appellant's brief did not separately refer to these particular specifications, but touched upon them generally through his argument on the other specifications. Therefore the appellee will not refer to them particularly other than to urge that they have been sufficiently treated in other portions of this argument.

CONCLUSION

It is respectfully submitted that the evidence in this case as against the appellant is as strong as might be imagined to show a violation of the act charged in the Indictment. It is further submitted that the Ninth Circuit still recognizes and applies the rule set forth in the *Miller v. U. S.*, case, supra.

It is further respectfully submitted that the law definitely contemplates that a conspiracy may exist between a prostitute and another person to commit a violation of the White Slave Traffic Act even though the woman that goes in interstate commerce be the instrumentality for carrying into effect the purpose of the conspiracy, for the conspiracy is the *crime.*

It is further respectfully submitted that the verdict of the jury based upon the conflicting testimony

introduced at the time of the trial was fully supported by the evidence and should be viewed in its most favorable light to the Government.

It is further respectfully submitted that the verdict of guilty as found by the jury is in concurrence with both the evidence and the law and that the conviction below should be affirmed.

Respectfully submitted,

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